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EXAMINER

HYLTON, ROBIN A.

ART UNIT PAPER NUMBER

3727

DATE MAILED: 10/30/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.



Art Unit: 3727

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "at least one slot formed across each of said plurality of ridges" (claim 1) and "at least one slot is formed across all the ridges" (claim 2) simultaneously must be shown or the features canceled from the claim. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Objections*

2. Claims 22, 50 and 54 are objected to because of the following informalities: in claim 22, "venting" is misspelled in the last line and in claims 50 and 54, "the" has been omitted between "between" and "outer surface of the bottle". Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

3. Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no disclosure for, "at least one slot formed across each of said plurality of ridges" (as set forth in claim 1) and "at least one slot is formed across all the ridges" (as set forth in claim 2) simultaneously. The specification indicates two different embodiments wherein the at least one slot is formed across each of said plurality of ridges or is formed across all the ridges.

Art Unit: 3727

4. Claims 23 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The liquid in the slot or groove is allowed to solidify (column 4, lines 33-35 of the original patent). The claim language asserts an action is taken to cause solidification of liquid in the slot or groove.

Additionally, it is unclear how solidified material in the slot or groove allows venting to occur.

#### ***Reissue Applications***

5. Claims 18-34 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

In applicant's amendment filed August 18, 2003 attempts to remove language from claim 18 which applicant had inserted into originally numbered claim 19 during prosecution of the original patent application. See paper No. 6 of US Patent Application 09/277,918.

Art Unit: 3727

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 43-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Kitterman (US 3,174,641).

Insert **14** has a first surface **46** with a groove **64** extending from a centrally located opening **58** the groove extending to an exterior of an associated bottle rim when used with a cap to closure a bottle. See figures 1 and 3.

8. Claims 18,19, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Montgomery (US 5,785,196).

The groove of Montgomery's inner cap wall extends beyond two locations of the bottle neck rim.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 50-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitterman.

Kitterman teaches the claimed cap and insert except is silent regarding the hardness of the plastic material used to make the insert.

Art Unit: 3727

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the insert of at least a semi-hard plastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

11. Claims 26 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gora (US 2,739,724) in view of Simard (US 4,896,781) or Moller (US 3,704,677).

Gora teaches a vented bottle cap system as claimed except for threads on the closure skirt and specifics of the plastic material of the insert **22**.

Simard and Moller both teach it is known to provide screw threads on a crown cap.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a crown cap. Doing so allows for easier removal of the closure from a bottle.

Regarding the plastic of the insert, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the insert of at least a semi-hard plastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

#### ***Allowable Subject Matter***

12. Claims 1-17,35-42,48, and 49 are allowable over the art of record.

#### ***Conclusion***

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to

Art Unit: 3727

a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet.

Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

14. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-\_\_\_\_ on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
October 22, 2003

  
Robin A. Hylton  
Primary Examiner  
GAU 3727